

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LIONEL L. EMBLER,	)	
	)	No. CV-09-0208-CI
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE,	)	MOTION FOR SUMMARY JUDGMENT
Commissioner of Social	)	
Security,	)	
	)	
Defendant.	)	

BEFORE THE COURT are cross-Motions for Summary Judgment. (Ct. Rec. 13, 18.) Attorney Rebecca M. Coufal represents Plaintiff; Special Assistant United States Attorney Franco L. Becia represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.) After reviewing the administrative record and the briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment and directs entry of judgment for Defendant.

On November 14, 2005, Lionel Embler (Plaintiff) applied for supplemental security income benefits (SSI), alleging disability beginning on October 28, 2005. (Tr. 18-26.) Plaintiff filed another application for SSI on March 20, 2006, alleging a disability

1 onset date of May 28, 1982. (Tr. 27-40.) On July 19, 2009, notice  
2 of ineligibility to receive SSI was sent to Plaintiff. (Tr. 59-62.)  
3 After denial on reconsideration, Plaintiff requested a hearing,  
4 which was held before Administrative Law Judge (ALJ) Paul Gaughen on  
5 October 30, 2008. (Tr. 234-71.) Plaintiff, who was represented by  
6 counsel, and Plaintiff's former spouse Audrey Embler testified. ALJ  
7 Gaughen denied benefits in a written decision dated January 16,  
8 2009. (Tr. 11-17.) The Appeals Council denied Plaintiff's request  
9 for review. (Tr. 3-5.) This appeal followed. Jurisdiction is  
10 appropriate pursuant to 42 U.S.C. § 405(g).

#### 11 STANDARD OF REVIEW

12 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
13 court set out the standard of review:

14 The decision of the Commissioner may be reversed only  
15 if it is not supported by substantial evidence or if it is  
16 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,  
17 1097 (9<sup>th</sup> Cir. 1999). Substantial evidence is defined as  
18 being more than a mere scintilla, but less than a  
19 preponderance. *Id.* at 1098. Put another way, substantial  
20 evidence is such relevant evidence as a reasonable mind  
21 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the  
22 evidence is susceptible to more than one rational  
23 interpretation, the court may not substitute its judgment  
24 for that of the Commissioner. *Tackett*, 180 F.3d at 1097;  
25 *Morgan v. Commissioner of Social Sec. Admin.* 169 F.3d 595,  
599 (9<sup>th</sup> Cir. 1999).

26 The ALJ is responsible for determining credibility,  
27 resolving conflicts in medical testimony, and resolving  
28 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup>  
Cir. 1995). The ALJ's determinations of law are reviewed  
*de novo*, although deference is owed to a reasonable  
construction of the applicable statutes. *McNatt v. Apfel*,  
201 F.3d 1084, 1087 (9<sup>th</sup> Cir. 2000).

26 It is the role of the trier of fact, not this court, to resolve  
27 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
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1 supports more than one rational interpretation, the court may not  
2 substitute its judgment for that of the Commissioner. *Tackett*, 180  
3 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
4 Nevertheless, a decision supported by substantial evidence will  
5 still be set aside if the proper legal standards were not applied in  
6 weighing the evidence and making the decision. *Browner v. Secretary*  
7 *of Health and Human Services*, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
8 there is substantial evidence to support the administrative  
9 findings, or if there is conflicting evidence that will support a  
10 finding of either disability or non-disability, the finding of the  
11 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
12 1230 (9<sup>th</sup> Cir. 1987).

#### 13 SEQUENTIAL PROCESS

14 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
15 requirements necessary to establish disability:

16 Under the Social Security Act, individuals who are  
17 "under a disability" are eligible to receive benefits. 42  
18 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any  
19 medically determinable physical or mental impairment"  
20 which prevents one from engaging "in any substantial  
21 gainful activity" and is expected to result in death or  
22 last "for a continuous period of not less than 12 months."  
23 42 U.S.C. § 423(d)(1)(A). Such an impairment must result  
24 from "anatomical, physiological, or psychological  
25 abnormalities which are demonstrable by medically  
26 acceptable clinical and laboratory diagnostic techniques."  
27 42 U.S.C. § 423(d)(3). The Act also provides that a  
28 claimant will be eligible for benefits only if his  
impairments "are of such severity that he is not only  
unable to do his previous work but cannot, considering his  
age, education and work experience, engage in any other  
kind of substantial gainful work which exists in the  
national economy . . . ." 42 U.S.C. § 423(d)(2)(A). Thus,  
the definition of disability consists of both medical and  
vocational components.

26 The Commissioner has established a five-step sequential  
27 evaluation process for determining whether a person is disabled. 20  
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1 C.F.R. §§ 404.1520(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-42  
2 (1987). In steps one through four, the burden of proof rests upon  
3 the claimant to establish a prima facie case of entitlement to  
4 disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir.  
5 1971). This burden is met once a claimant establishes that a  
6 physical or mental impairment prevents him from engaging in his  
7 previous occupation. 20 C.F.R. §§ 404.1520(a). At step five, the  
8 burden shifts to the Commissioner to show that (1) the claimant can  
9 perform other substantial gainful activity; and (2) a "significant  
10 number of jobs exist in the national economy" which claimant can  
11 perform. 20 C.F.R. §§ 404.1520(a)(4)(v); *Kail v. Heckler*, 722 F.2d  
12 1496, 1498 (9<sup>th</sup> Cir. 1984).

#### 13 STATEMENT OF FACTS

14 Plaintiff was awarded disability insurance benefits (DIB),  
15 effective in 1982, which he was receiving at the time of the  
16 hearing. (Tr. 245.) He applied for SSI on March 31, 2006,  
17 representing that he and his former spouse, Audrey Embler, were  
18 divorced, and he lived alone. (Tr. 28-29.) He testified he and Ms.  
19 Embler divorced so he could received benefits, but he and she  
20 continue to live together. (Tr. 244-45.) He also stated he had  
21 opened up a separate bank account six months to a year prior to the  
22 hearing. (Tr. 245.)

#### 23 ADMINISTRATIVE DECISION

24 The ALJ found Plaintiff was legally divorced from Audrey Embler  
25 when the March 31, 2006, application was filed. (Tr. 12.) He also  
26 found that Plaintiff and Ms. Embler lived in the same residence  
27 since the SSI application, and Plaintiff received the benefit of  
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1 "the value of food, shelter and clothing provided by the pooling  
2 and/or co-mingling of resources with Audrey Embler." (Tr. 13.) ALJ  
3 Gaughen further determined Plaintiff and Ms. Embler had a joint  
4 checking account on March 31, 2006, from which both could access  
5 funds and make deposits. He found Plaintiff and Ms. Embler co-  
6 mingled funds and pooled their resources for the benefit of  
7 Plaintiff. (Tr. 15.) After a discussion of the record, the ALJ  
8 noted unsuccessful efforts by the Social Security Administration  
9 (SSA) to obtain additional information from Plaintiff regarding  
10 joint bank accounts with Ms. Embler. (Tr. 15-16.) The ALJ found  
11 Plaintiff failed to provide requested documentation that would  
12 overcome the presumption that he had access to resources held by Ms.  
13 Embler at the time of his SSI application. (Tr. 16.) He affirmed  
14 the SSA's finding that Plaintiff's deemed income, as described in  
15 the Social Security Regulations, on March 31, 2006, precluded  
16 entitlement to SSI benefits; he then concluded Plaintiff was  
17 ineligible for SSI benefits due to excess resources. (*Id.*)

#### 18 **ISSUES**

19 The question presented is whether there is substantial evidence  
20 to support the ALJ's decision denying benefits and, if so, whether  
21 that decision is based on proper legal standards. Plaintiff argues  
22 the ALJ erred in calculating Ms. Embler's income as deemed income  
23 for purposes of SSI eligibility. (Ct. Rec. 14 at 8.) Defendant  
24 responds the ALJ properly found Plaintiff ineligible for benefits  
25 because he failed to rebut a presumption of commingled resources in  
26 a joint bank account with Ms. Embler as of March 2006. (Ct. Rec. 19  
27 at 5.)

**DISCUSSION**

The Supplement Security Income program is a need-based program for people with disabilities. 42 U.S.C. § 1381a. Eligibility is precluded if a claimant's income exceeds the amount of SSI payment for the month. 20 C.F.R. §416.1100. Income may be earned or unearned, cash or something that can be used to obtain food or shelter. 20 C.F.R. §§ 416.1102, 1104. Certain sources of income are excluded in the calculation, such as state and local public need-based assistance. 20 C.F.R. § 416.1124(c)(2). In addition to a claimant's income, income from a person with whom the claimant is residing is considered (deemed) income to the claimant. 20 C.F.R. § 416.1160. If a claimant's monthly income (actual and deemed) exceeds \$2,000 as of January 1, 1989, he is not eligible for SSI benefits. 20 C.F.R. § 416.1205.

Here, the ALJ thoroughly summarized the record and hearing testimony regarding sources of income from claimant and Ms. Embler. (Tr. 12-16.) He found Plaintiff's income consisted of his disability insurance benefits, unearned income from Ms. Embler deposited into a joint account accessible to Plaintiff, and the value of food, shelter and clothing Plaintiff received monthly. (Tr. 13.) Plaintiff argues Ms. Embler's income as his care provider is not deemed income for eligibility purposes; however, the ALJ's finding of ineligibility is based on Plaintiff's failure to provide proof that the joint accounts with Ms. Embler were not accessible to him on March 31, 2006, when he applied for SSI.

If funds exist in a joint bank account held by Plaintiff and Ms. Embler, the entire amount of funds are presumed to belong to

1 Plaintiff. 20 C.F.R. 416.1208(c)(1). The Regulations set forth the  
2 specific procedure necessary to rebut the presumption raised by a  
3 joint account in which one of the holders is a SSI claimant. 20  
4 C.F.R. §416.1208(c)(4). Specifically, the SSI claimant must:

5 (i) Submit his/her statement, along with corroborating  
6 statements from other account holders, regarding who owns  
7 the funds in the joint account, why there is a joint  
8 account, who has made deposits to and withdrawals from the  
9 account, and how withdrawals have been spent;

10 (ii) Submit account records showing deposits, withdrawals,  
11 interest (if any) in the months for which ownership of  
12 funds is at issue; and

13 (iii) Correct the account title to show that the  
14 individual is no longer a co-owner if the individual owns  
15 none of the funds; or, if the individual owns only a  
16 portion of the funds, separate the funds owned by the  
17 other account holder(s) from his/her own funds and correct  
18 the account title on the individual's own funds to show  
19 they are solely-owned by the individual.

20 *Id.* As found by the ALJ, Plaintiff did not meet his burden to rebut  
21 the presumption that all funds in the joint checking account belong  
22 to him. (Tr. 16.)

23 In support of his finding that Plaintiff is ineligible for SSI  
24 benefits, the ALJ referenced records from Washington Trust Bank that  
25 show deposits into and withdrawals from the separate account, but no  
26 evidence that the joint checking account at Washington Trust Bank  
27 prior to or after March 31, 2006, was closed. (Tr. 16.) Further,  
28 as found by the ALJ, Plaintiff testified he did not open a separate  
account until about six months before the hearing. (Tr. 245-46.)  
The record includes evidence that he had a separate account as of  
July 2006, but as found by the ALJ, Plaintiff failed to present the  
required evidence that he and Ms. Embler no longer co-mingled their  
income. (Tr. 16, see also Tr. 110-218, 136.) The ALJ properly

1 found Plaintiff failed to provide the information required by the  
2 Regulations to prove the joint account is closed and Ms. Embler's  
3 resources were not available to him as of March 31, 2006.<sup>1</sup> (Tr. 15-  
4 16.)

5 Because Plaintiff has not complied with the regulatory  
6 procedure to rebut the presumption that he had access to funds in  
7 the joint account as of March 31, 2006, all funds in the joint  
8 account are deemed his resources. The total of co-mingled resources  
9 in the joint account on average exceed Plaintiff's monthly SSI  
10 payments. (Tr. 13, 47, 59-71.) The ALJ did not err in finding  
11 Plaintiff ineligible for SSI benefits based on the record before the  
12 court. Accordingly,

13 **IT IS ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 13**) is  
15 **DENIED.**

16 2. Defendant's Motion for Summary Judgment dismissal (**Ct.**  
17 **Rec. 18**) is **GRANTED.**

18 The District Court Executive is directed to file this Order and  
19 provide a copy to counsel for Plaintiff and Defendant. The file

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21 <sup>1</sup> In making these findings, the ALJ noted inconsistencies  
22 between Plaintiff's testimony and the record regarding his living  
23 arrangements with Ms. Embler. He found both Plaintiff and Ms.  
24 Embler testified they continued to live together after their  
25 divorce; however, Plaintiff represented on his March 31, 2006,  
26 application for SSI that he lived alone. (Tr. 15, 35, 244.) This  
27 inconsistency erodes to some degree Plaintiff's credibility. See  
28 *Tonapetyan v. Halter*, 242 F.3d. 1144, 1148 (9<sup>th</sup> Cir. 2001).



1 shall be **CLOSED** and judgment entered for **Defendant**.

2 DATED October 6, 2010.

3  
4 S/ CYNTHIA IMBROGNO  
5 UNITED STATES MAGISTRATE JUDGE  
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